

WIn Laboratories Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-08-2004

Reported in : (2004)(95)ECC575

Judge : J Balasundaram, A M Moheb

Appellant : WIn Laboratories Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants manufactured bulk drugs and intermediate drugs such as Pyrantal Citrate, Disodium Pamoate and epoxide amongst other intermediates during the period 1.4.1987 to 29.2.1988. The above intermediate drugs and used them in manufacture of bulk drugs without payment of duty. Bulk drugs were exempt from payment of duty under notification No. 234/86 CE dt. 3.4.1986. When intermediate products are used in the manufacture of exempted final product duty has to be discharged on the intermediate products as the exemption contained in 217/86 was not available to such intermediate products. The allegation of the department is that during above said period, the appellants did not discharge the duty on the intermediate products.

2. In the impugned order duty has been demanded on Pyrantal Citrate, Disodium Pamoate and Epoxide produced and cleared for captive consumption during the above said period. Hence the appeal.

4. Regarding (a) above it was pointed out that the chart showing the calculation annexed to the impugned order indicates that the demand for duty on the above said intermediate products is worked out for the period April 1987 to March 1988, on the ground that during this period the final product (Bulk Drugs) is exempt from payment of duty under Notification 234/86. But the said notification was rescinded on 1.3.1888 whereby the final products became dutiable and therefore the demand for duty on intermediate products consumed in the manufacture of the final product for the month of March 1988 is not tenable. This is in respect of both products (Pyrrantal Citrate and Epoxide) it was further pointed out that the Commissioner invoked larger period of limitation for demanding duty on the intermediate products. The show cause notice in this regard is dated 18.8.1992. Working backwards the five years period ends on 18.8.1987. The chart however shows that the amount of duty payable is calculated right from April 1987 onwards.

The period April 1987 to 18.8.1987 is beyond the five years limit and therefore no duty can be demanded on the goods cleared without payment of duty during this period.

5. In regard to the product Disodium Pamoate it was urged that in the impugned order the Commissioner held that the claim for duty on this product is time barred as the assessee had mentioned the fact that this product was one of the intermediate products manufactured by him while filing the classification list. However, the chart annexed to the impugned order shows that duty is demanded on this product as well. The demand in respect of this product therefore needs to be set aside even if it is held that the larger period of limitation is invocable in respect of the other two products.

5. It was further urged that the product, Epoxide has no shelf life and therefore is not marketable. What is not marketable is not excisable.

Duty therefore on this product should not have been demanded.

6. With reference to (b) above it was urged that extended period of limitation is not invocable as there was no suppression on the part of the appellants with an intent

to evade duty. The appellants were under the honest impression that their intermediate products were not marketable. In the flow chart submitted to the department at the time of seeking registration under Rule 174 of Central Excise Rules, 1944 they have indicated the names of the intermediate products in question.

The department was aware that during the process of manufacture of final products these intermediate products do come into existence. In such a case suppression cannot be alleged against them. The burden to prove that the goods are marketable is on the department but the department failed to discharge this burden.

7. With regard to (c) above it was contended that since extended period is, not invocable no penalty can be imposed. Further there were no mala fides on their part necessitating imposition of penalty.

8. The Ld. DR pleaded that extended period of limitation is invocable in this case as the appellants have not disclosed the intermediate products manufactured by them in the classification list. The plea that the flow chart filed by the appellants while seeking registration is not a sufficient disclosure. All declarations have to be specifically made in the classification list. The appellants have not done so. He further pointed out that the plea that Pyrantal Citrate and Epoxide are not marketable is not tenable in the light of the evidence gathered during the investigation. It was found that Epoxide was brought from another factory to the appellants premises and from their the product was sent to another sister concern of the appellants. Even in the case of Pyrantal Citrate it was brought out, that the product was available as an organic chemical in the market and were sold by the appellant themselves on occasions.

10. We accept the contention of the Ld. Advocate that duty demanded on Pyrantal Citrate and Epoxide for the period 1.4.87 to 18.8.87 is barred by limitation. We also accept the contention that the chart annexed to the impugned order has taken the production and clearance of the above said products for the month of March 1988 for the purpose of calculating the duty liability. This is incorrect as pointed out by the Ld. Advocate. Notification No. 234/86 was rescinded on 1.3.1988, whereby

the final product (Bulk Drugs) became dutiable. The exemption contained in Notification No. 217/86 was therefore available to the intermediate products from that date. (1.3.88) In regard to the intermediate product Disodium Pamoate on which duty was demanded invoking the extended period we observe that the Ld. Commissioner in the impugned order in para 24 observed that extended period cannot be invoked in respect of this product. However he calculated the duty liability on this product as well in the chart annexed to his order.

Demand for duty on DSP for entire period is set aside.

10. We do not accept the contention of the Ld. Advocate that extended period of limitation cannot be invoked while demanding duty in this case. It is admitted by him that the appellants have not disclosed the names of the intermediate products in their classification list, which amounts to suppression. His plea that the appellants were under the honest impression that such disclosure was not necessary cannot be accepted. They have been in the business of manufacture of bulk drugs right from 1983. Further, it is seen from the classification list filed by them that they have been declaring one of their intermediate products namely DSP. In regard to marketability we accept the evidence as pointed out by the Ld. DR to indicate that the goods are marketable.- 11. Having regard to what has been discussed above, we uphold the demand on Pyrantal Citrate for the period August 1987 to 1st March 1988. Demand on epoxide is upheld for the same period. Demand for duty on DSP set aside for Recalculation of duty on the above basis has to be carried out by the Commissioner. In the facts and circumstances of the case penalty is reduced to Rs. 50,000/-.

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